

In the United States Court of Appeals  
for the Ninth Circuit

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ROSEWOOD HOTEL, INC., PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

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On Petition for Review of An Order of the  
Tax Court of the United States

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BRIEF FOR THE RESPONDENT

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**In the United States Court of Appeals  
for the Ninth Circuit**

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No. 16,509

ROSEWOOD HOTEL, INC., PETITIONER

*v.*

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

---

**On Petition for Review of An Order of the  
Tax Court of the United States**

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**BRIEF FOR THE RESPONDENT**

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**OPINION BELOW**

The Tax Court did not render an opinion.

**JURISDICTION**

This petition for review (R. 29-35) involves a deficiency in federal income and excess profits tax and penalties for the taxable years ending November 30, 1954, and November 30, 1955 (R. 70). On June 12, 1958, the Commissioner of Internal Revenue forwarded by registered mail to the taxpayer a notice of deficiency in the total amount of \$48,305.79. (R. 7, 9, 13, 26.) The taxpayer filed a peti-

tion with the Tax Court on October 7, 1958, for re-determination of that deficiency. (R. 3-13, 38.) The order of the Tax Court dismissing the petition for lack of jurisdiction was entered on February 9, 1959. (R. 16-17.) The order of the Tax Court denying the taxpayer's motion to vacate the order of dismissal was entered on March 20, 1959. (R. 25-27.) The case is brought to this Court by petition for review filed on May 4, 1959. (R. 29-35.) The jurisdiction of this Court is invoked under Section 7482, Internal Revenue Code of 1954.

### QUESTION PRESENTED

Whether the Tax Court correctly dismissed the petition for redetermination for lack of jurisdiction because the petition was not filed within the 90-day period after the notice of deficiency was mailed as prescribed by Section 272(a)(1) of the Internal Revenue Code of 1939 and Section 6213(a) of the Internal Revenue Code of 1954.

### STATUTES AND REGULATIONS INVOLVED

The statutes and Regulations appear in the Appendix, *infra*.

### STATEMENT

The Commissioner determined a deficiency in the taxpayer's income and excess profits tax and penalties for the taxable years ending November 30, 1954, and November 30, 1955. (R. 7.) A notice of deficiency was sent by registered mail to the taxpayer's last



known address of 3421 West Second Street, Los Angeles 4, California, on June 12, 1958. (R. 7, 13, 26.) The notice was returned undelivered. The taxpayer alleges that the notice was personally served upon Nathan Stein on July 17, 1958, at the Temple Hospital in Los Angeles by an Internal Revenue Agent. (R. 3-4.) The ninetieth day after the notice of deficiency was mailed to the taxpayer was September 10, 1958, which was neither a Saturday, Sunday, nor legal holiday in the District of Columbia. The envelope containing the petition for redetermination was postmarked October 3, 1958, which was the 113th day after the notice of deficiency was mailed. (R. 13.) The petition was received and filed by the Tax Court on October 7, 1958, the 117th day after the notice of deficiency was mailed. (R. 13-14.)

The Commissioner filed a motion to dismiss the petition on the ground that the Tax Court lacked jurisdiction since the taxpayer failed to file the petition within 90 days after the notice of deficiency was mailed. (R. 13-14.) The Tax Court granted the Commissioner's motion to dismiss (R. 16-17), denied the taxpayer's motion to vacate the order of dismissal (R. 25-27), and denied the motion for a rehearing on the motion to vacate (R. 28-29).

### SUMMARY OF ARGUMENT

When the Commissioner sends a notice of deficiency in accordance with the applicable provisions of the Internal Revenue Code the 90-day period within which to file a petition for redetermination

with the Tax Court commences on the date the notice of deficiency is mailed. On June 12, 1958, the Commissioner sent to the taxpayer at its last known address a notice of deficiency by registered mail. This notice complied in all respects with the statutory requirements. It is immaterial that the notice was returned undelivered because actual receipt of the notice is not required in order that the statutory filing period commence. Nor is it material that the taxpayer had ceased doing business, because under Section 272(k) of the Internal Revenue Code of 1939 and Section 6212(b)(1) of the Internal Revenue Code of 1954, sending the notice to the last known address is sufficient, in case of a corporation, as here, even though it has terminated its existence. The only exception is in the instance of a notice to the Commissioner of the existence of a fiduciary relationship. There was no notice of a fiduciary relationship in this case. The 90-day period within which to file a petition began on the mailing date of June 12, 1958, and expired on September 10, 1958. Filing the petition on October 7, 1958, therefore, was untimely.

The Tax Court is a tribunal with limited jurisdiction, and the filing requirement is jurisdictional. There must be strict compliance with the statutory jurisdictional requirements, and there is no authority "to relieve the taxpayer from the clear jurisdictional requirements of the law." The extent to which the requirement of filing the petition by delivery to the Tax Court has been temporized is set forth in Section 7502 of the Internal Revenue Code of 1954. That

section is not apposite here because the postmarked date on the envelope containing the petition is not within the prescribed 90-day period.

Since the petition was untimely filed on October 7, 1958, the Tax Court did not acquire jurisdiction. Therefore, the Tax Court correctly dismissed the petition.

### ARGUMENT

#### The Tax Court Correctly Dismissed the Petition for Lack of Jurisdiction Because the Petition Was Not Filed Within the Prescribed 90 Days

- A. *The notice of deficiency was properly mailed to the taxpayer at its last known address and the 90-day period for filing the petition commenced on the mailing date of June 12, 1958.*

Section 272(a)(1) of the Internal Revenue Code of 1939<sup>1</sup> (Appendix, *infra*) requires the mailing of a notice of deficiency to the taxpayer as a prerequisite to assessment if the Commissioner determines there is a deficiency in income tax. The section authorizes sending the notice of deficiency by regis-

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<sup>1</sup> Section 272 of the Internal Revenue Code of 1939 applies to the taxable year ending November 30, 1954, while Sections 6212 and 6213 of the Internal Revenue Code of 1954 apply to the taxable year ending November 30, 1955. See Section 7851(a)(6) of the Internal Revenue Code of 1954. Since the pertinent portions of Section 272 of the 1939 Code and Sections 6212 and 6213 of the 1954 Code (Appendix, *infra*) (relating to the requirement of sending a notice to the last known address of the taxpayer and of filing a petition within 90 days after the notice is mailed) are substantially the same, references herein will be made solely to the 1939 Code for the sake of brevity.

tered mail, and Subsection (k) (Appendix, *infra*) states that in the absence of notice to the Commissioner of a fiduciary relationship, mailing the notice of deficiency "to the taxpayer at his last known address, shall be sufficient for the purposes of this chapter even if such taxpayer \* \* \* in the case of a corporation, has terminated its existence." The ninety-day period within which a petition for redetermination may be filed with the Tax Court is computed from the date the notice of deficiency is mailed. Section 272(a)(1). The Commissioner determined deficiencies in income tax in this case for the taxable years ending November 30, 1954 and November 30, 1955, and on June 12, 1958, a notice of deficiency was mailed by registered mail to the taxpayer correctly addressed to 3421 West Second Street, Los Angeles, California. This was the last known address of the taxpayer. This notice was returned undelivered. That the notice of deficiency is not actually received does not postpone the beginning date of the 90-day period because the statute does not require actual receipt. Section 272(a)(1) and (k); *Gregory v. United States*, 57 F. Supp. 962 (C. Cls.), certiorari denied, 326 U. S. 747; *Helfrich v. Commissioner*, 25 T. C. 404. Thus, in accordance with the statute, the 90-day period within which to file the petition for redetermination commenced on June 12, 1958, the date the notice of deficiency was properly mailed to the taxpayer's last known address.

This Court has pointed out in *Boren v. Riddell*, 241 F. 2d 670, 672, that Section 272 was designed to facilitate and provide for, *as far as practicable*,

actual delivery to taxpayers of the Commissioner's notices of deficiency. The obvious purpose of the statute was to put a taxpayer on notice of the administrative determination and to allow him a sufficient opportunity to file a petition for redetermination with the Tax Court if he chooses. *Dolezilek v. Commissioner*, 212 F. 2d 458 (C.A. D.C.); *Boren v. Riddell*, *supra*. See also H. Rep. No. 179 68th Cong., 1st Sess., pp. 62, 64 (1924) (1939-1 Cum. Bull. (Part 2) 241, 258, 260); S. Rep. No. 398 68th Cong., 1st Sess. pp. 30-31, 32-33 (1924) (1939-1 Cum. Bull. (Part 2) 266, 287); H. Rep. No. 1, 69th Cong., 1st Sess. pp. 10-11 (1925) (1939-1) Cum. Bull. (Part 2) 315, 321-322); S. Rep. No. 52, 69th Cong., 1st Sess., pp. 26-27 (1926) (1939-1) Cum. Bull. (Part 2) 361, 368). The administrative practice of seeking to accomplish the purpose of the statute by achieving actual notice is exemplified by telephonic contact as in *D'Andrea v. Commissioner*, 263 F. 2d 904 (C.A. D.C.), manual delivery as in *Dolezilek v. Commissioner*, *supra*, and *Goldstein v. Commissioner*, 22 T. C. 1233, and remailing as in *Teel v. Commissioner*, 248 F. 2d 749 (C.A. 10th), and *Boren v. Riddell*, *supra*.

Nondelivery of the notice mailed to 3421 West Second Street was not due to the Commissioner's fault. The Commissioner fulfills his duty when he complies with the statute by sending the notice to the last known address. Though the taxpayer *now* asserts in its argument (Br. 7-8) that the notice was not sent to the last known address of the taxpayer, significantly the taxpayer alleged and set forth in

paragraph I of its petition for redetermination as being its address—the identical address (3421 West Second Street) used by the Commissioner. (R. 3.) This petition which was filed on October 7, 1958 was duly verified under oath and also bears the signature of the present counsel in this case.

The case of *D'Andrea v. Commissioner*, 263 F. 2d 904 (C.A. D.C.), which is cited by the taxpayer (Br. 7, 10), is distinguishable because in that case the Commissioner had formal notice of the taxpayer's last address in the power of attorney in his files, but the registered notice was not mailed to that address. The taxpayer does not claim that formal notice of a change of address was given to the Commissioner. Certainly such informal notice as taxpayer now undertakes to say was given to the revenue agents, even if given, is not sufficient to change the record address for purposes of sending a notice of deficiency.<sup>2</sup> See *Goldstein v. Commissioner*, 22 T.C. 1233; *Teel v. Commissioner*, 248 F. 2d 749 (C.A. 10th); *Williams v. United States*, 264 F. 2d 227 (C.A. 6th). The Commissioner should not be charged

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<sup>2</sup> The taxpayer alleges (R. 18, 20) :

(4) That during the period of approximately December, 1957, through March 15, 1958, Revenue Agents Goddard and Keller made an audit of Petitioner, for the fiscal taxable years ended November 30, 1954, and November 30, 1955, and during the course of said audit and at that time said Revenue Agents were told that:

\* \* \* \*

(g) \* \* \* any 90-day letter for Petitioner should be mailed or delivered to Nathan Stein at Temple Hospital on Hoover Street in Los Angeles.

with notice of a change of address by a mere verbal reference allegedly made sometime during the course of an audit extending over the period December 1957 through March 15, 1958 to an address other than that shown in the Commissioner's administrative files.<sup>3</sup> The notice of a change of address which was given to a Collector (now District Director) in *Trefry v. Commissioner*, 10 B.T.A. 134, and charged to the Commissioner and which was given to an acting Deputy Commissioner in *Wyoming Central Ass'n. v. Commissioner*, 8 B.T.A. 1064 was entirely different from the type of notice claimed to be given by the taxpayer here. See also *Gregory v. United States*, 57 F. Supp. 962 (C. Cls.), certiorari denied, 326 U.S. 747. Moreover, the taxpayer's assertion in its motion to vacate the order of dismissal (R. 18-20) that the agents were informed of a particular address to which to send the notice of deficiency, is belied by the fact, above adverted to, that the taxpayer recited in its verified petition for redetermination *as its address* the same address to which the notice of deficiency was mailed, namely, 3421 West Second Street, Los Angeles 4, California.<sup>4</sup>

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<sup>3</sup> It should also be noted that taxpayer's change of address contention was made for the first time after the Tax Court had entered its original order dismissing taxpayer's petition for lack of jurisdiction. (R. 16-20.)

<sup>4</sup> The taxpayer complains that it was not aware of the mailing and return of the notice of deficiency. (Br. 9.) But, on the other hand, the taxpayer admits that it received the original notice dated June 12, 1958 (Br. 3-9), and in its petition for redetermination the taxpayer recited that

B. *the requirement of filing a petition with the tax court within the prescribed 90-day period is jurisdictional*

The Tax Court is a tribunal of limited jurisdiction (*Lasky v. Commissioner*, 352 U.S. 1027; *Commissioner v. Gooch Milling & Elevator Co.*, 320 U.S. 418) and the filing requirement is jurisdictional (*Mindell v. Commissioner*, 200 F. 2d 38 (C.A. 2d); *Galvin v. Commissioner*, 239 F. 2d 166 (C.A. 2d)).<sup>5</sup>

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the notice of deficiency was dated June 12, 1958 (R. 3). That the notice of deficiency was received on July 17, 1958, more than a month after its date (June 12, 1958) would certainly arouse curiosity as to the cause of delay. This is especially so since the notice was delivered personally. This is not a case like *Eppler v. Commissioner*, 188 F. 2d 95 (C.A. 7th), where the registered notice of deficiency which was sent to a "former" address was re-registered and sent to taxpayer's business address where he received it without any notice of the first mailing. In the *Eppler* case, the court said (p. 98):

But the taxpayer insists, and we think with justification that by mailing out the notice of deficiency the second time by registered mail the taxpayer was given no notice of the first mailing and that he was therefore misled into believing that he had ninety days from the second mailing within which to file his appeal. The Commissioner should not be permitted to defeat the purpose of this remedial statute by so misleading the taxpayer.

<sup>5</sup> Accord: *Underwriters, Inc. v. Commissioner*, 215 F. 2d 953 (C.A. 3d); *Lingham-Pritchard v. Commissioner*, 242 F. 2d 750 (C.A. 3d), certiorari denied, 355 U.S. 846, rehearing denied, 355 U.S. 886; *Kiker v. Commissioner*, 218 F. 2d 389 (C.A. 4th); *Poyner v. Commissioner*, 81 F. 2d 521 (C.A. 5th); *Worthington v. Commissioner*, 211 F. 2d 131 (C.A. 6th); *Eppler v. Commissioner*, 188 F. 2d 95 (C.A. 7th); *DiProspero v. Commissioner*, 176 F. 2d 76 (C.A. 9th);



There must be strict compliance with the statutory jurisdictional requirements (*Stebbins' Estate v. Helvering*, 121 F. 2d 892 (C.A. D.C.)), and no matter how apparently inequitable the situation, there is no authority "to relieve the taxpayer from the clear jurisdictional requirements of the law" (*Rich v. Commissioner*, 250 F. 2d 170, 175 (C.A. 5th)).

It is significant, we think, that in enacting Section 7502 of the Internal Revenue Code of 1954 (26 U.S.C. 1958 ed., Sec. 7502), presumably with knowledge of the decisions in such cases as *Poyner v. Commissioner*, *supra*; *Stebbins' Estate v. Commissioner*, *supra*, and *DiProspero v. Commissioner*, 176 F. 2d 76 (C.A. 9th) (where a delay in filing was occasioned by the mode of delivery though the selection of such mode was reasonable) Congress failed to extend equitable considerations with respect to determining whether a petition with the Tax Court was filed in time beyond consideration of the date of mailing as indicated by the postmark. See *Rich v. Commissioner*, *supra*; *Bloch v. Commissioner*, 254 F. 2d 277 (C.A. 9th); *Madison v. Commissioner*, 28 T.C. 1304. Section 7502(a) of the Internal Revenue Code of 1954 treats timely mailing (as shown by the postmark) as timely filing. The section is effective for mailing which occurs after August 16, 1954, as here, but Section 7502(a) provides:

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*Ryan v. Alexander*, 118 F. 2d 744 (C.A. 10th); *Teel v. Commissioner*, 248 F. 2d 749 (C.A. 10th); *Lewis-Hall Iron Works v. Blair*, 23 F. 2d 972 (C.A. D.C.), certiorari denied, 277 U.S. 592.

This subsection shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of the claim, statement, or other document, \* \* \*

The postmark date here was October 3, 1958, which was nearly a month *after the end of the 90-day period*. Consequently, Section 7502 is not applicable in this case. We submit that Section 7502 demonstrates Congress' choice and plainly delimits whatever relaxation of the prior strict delivery requirement was intended. Section 7502(a) does not otherwise permit an extension of the 90-day period predicated upon either hardship or equity. See House Hearings on General Revenue Revision (1953), pp. 1344, 1358; Senate Hearings on Internal Revenue Code of 1954 (1954), pp. 482, 1325, 2283; H. Rep. No. 1337, 83d Cong., 2d Sess., p. 434 (3 U.S.C. Cong. & Adm. News (1954) 4017); S. Rep. No. 1622, 83d Cong., 2d Sess., p. 615 (3 U.S.C. Cong. & Adm. News (1954) 4621, 5266).

To file a petition with the Tax Court pursuant to Section 272(a)(1) of the 1939 Code means actual delivery of the petition to the Tax Court within the prescribed 90 days. *Jorgensen v. Commissioner*, 246 F. 2d 536 (C.A. 9th); *Galvin v. Commissioner*, 239 F. 2d 166 (C.A. 2d); *Lewis-Hall Iron Works v. Blair*, 23 F. 2d 972 (C.A. D.C.), certiorari denied, 277 U.S. 592. The taxpayer's petition here was not actually delivered until October 7, 1958. (R. 13-14.) This was 117 days after the notice of deficiency was mailed to the taxpayer and twenty-seven days after the end of the prescribed 90-day period. The peti-

tion, therefore, was not timely filed in accordance with the actual delivery requirement of Section 272 (a) (1) and the Tax Court did not acquire jurisdiction.

The Tax Court dismissed the petition on the ground that the record and evidence showed that the petition was not filed within the time prescribed by the statute and that it lacked jurisdiction. (R. 16-17.) In its order on the taxpayer's motion to vacate the order of dismissal, the Tax Court interpreted its order of dismissal and stated (R. 25-26) :

The petitioner filed a document in opposition to the motion and, thereafter, hearing on the motion was held at which time *facts were proven showing that the petition had not been filed within 90 days of the date on which the notice of deficiency had been mailed to the petitioner by registered mail as required by law* and the Court entered an order on February 9, 1959, dismissing the case for lack of jurisdiction. (Italics added.)

The record shows that the Tax Court's finding that the notice was mailed as required by law (to the taxpayer's last known address) and its dismissal of the petition as untimely filed were correct. The reference in the Tax Court's order on the taxpayer's motion to vacate the order of dismissal (R. 26-27) to some other ground as a possible basis for also denying jurisdiction was therefore unnecessary and, accordingly does not constitute reversible error. See *Helvering v. Gowran*, 302 U.S. 238, 245-6, rehearing denied, 302 U.S. 781; *Hormel v. Helvering*, 312 U.S. 522, 558.

The taxpayer urges the proposition that it is entitled to compute the filing period of 90 days from the date of actual receipt of the notice of deficiency. (Br. 9-10.) This proposition ignores the explicit statutory jurisdictional limitation of 90 days from the date the notice of deficiency was mailed to the taxpayer's last known address. There is no authority to extend that period by making it dependent upon actual receipt of the notice.

Implicit in the taxpayer's argument under point I (Br. 7-8) is the claim that the taxpayer will be deprived of a right to a judicial determination of the deficiency. This is simply an appeal for sympathy. It is the Congressional prerogative to establish the time within which a proceeding may be initiated in the Tax Court prior to payment of the deficiency. See *Brushaber v. Union Pac. R.R.*, 240 U.S. 1; *Federal Grain Co. v. United States*, 35 F. 2d 260 (W.D. Mo.); *Vance v. Vance*, 108 U.S. 514. That time has been established in Section 272, as modified by Section 7502 of the Internal Revenue Code of 1954, which does not permit an extension predicated upon either hardship or equity. The procedure in this case is consonant with the principles of our entire legal system; for in any case an aggrieved party's remedy may be barred upon the expiration of the period of limitations within which a remedy might have been pursued. 2 Cooley, *Constitutional Limitations*, pp. 760-765 (8th ed., 1927); *Restatement of Judgments* (1942), Sections 47(c), 49(a). In addition, a proceeding in the Tax Court is not necessarily the taxpayer's single recourse. See Sec-

tions 322(b) (1) and 3772(a) of the 1939 Code and Section 7422(a) of the 1954 Code. See also 28 U.S.C., Sections 1346(a) and 1491.

### CONCLUSION

Mailing the notice of deficiency by registered m on June 12, 1958, to the taxpayer's last known address complied with the statutory requirements and commenced the running of the prescribed 90 days within which to file a petition for redetermination with the Tax Court. The filing period expired on September 10, 1958. The petition was untimely filed on October 7, 1958. The Tax Court, therefore, did not acquire jurisdiction and properly dismissed the petition. The order of dismissal should be affirmed.

Respectfully submitted,

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NOVEMBER, 1959

## APPENDIX

## INTERNAL REVENUE CODE OF 1939:

Sec. 272 [as amended by Sec. 203, Act of December 29, 1945, c. 652, 59 Stat. 669]. PROCEDURE IN GENERAL.

(a) (1) *Petition to the Tax Court of the United States.*—If in the case of any taxpayer, the Commissioner determines that there is a deficiency in respect of the tax imposed by this chapter, the Commissioner is authorized to send notice of such deficiency to the taxpayer by registered mail. Within ninety days after such notice is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the ninetieth day), the taxpayer may file a petition with the Tax Court of the United States for a redetermination of the deficiency. No assessment of a deficiency in respect of the tax imposed by this chapter and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such ninety-day period, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 3653(a) the making of such assessment or the beginning of such proceeding of distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court. In the case of a joint return filed by husband and wife such notice of deficiency may be a single joint notice, except that if the Commissioner has been notified by either spouse that separate residences have been established, then, in lieu of the single joint

notice, duplicate originals of the joint notice must be sent by registered mail to each spouse at his last known address.

\* \* \* \*

(k) *Address for Notice of Deficiency.*—In the absence of notice to the Commissioner under section 312(a) of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by this chapter, if mailed to the taxpayer at his last known address, shall be sufficient for the purposes of this chapter even if such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

(26 U.S.C. 1952 ed., Sec. 272.)

## INTERNAL REVENUE CODE OF 1954:

### Sec. 6212 NOTICE OF DEFICIENCY.

(a) *In General.*—If the Secretary or his delegate determines that there is a deficiency in respect of any tax imposed by subtitles A or B, he is authorized to send notice of such deficiency to the taxpayer by registered mail.

(b) *Address for Notice of Deficiency.*—

(1) *Income and gift taxes.*—In the absence of notice to the Secretary or his delegate under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by chapter 1 or 12, if mailed to the taxpayer at his last known address, shall be sufficient for purposes of such chapter and this chapter even if such taxpayer is deceased, or is

under a legal disability, or, in the case of a corporation, has terminated its existence.

\* \* \* \*

(26 U.S.C. 1958 ed., Sec. 6212.)

Sec. 6213 RESTRICTIONS APPLICABLE TO DEFICIENCIES; PETITION TO TAX COURT.

(a) *Time for Filing Petition and Restriction on Assessment.*—Within 90 days, or 150 days if the notice is addressed to a person outside the States of the Union and the District of Columbia, after the notice of deficiency authorized in section 6212 is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. Except as otherwise provided in section 6861 no assessment of a deficiency in respect of any tax imposed by subtitle A or B and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 90-day or 150-day period, as the case may be, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final.

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(26 U.S.C. 1958 ed., Sec. 6213.)

Treasury Regulations 118, promulgated under the Internal Revenue Code of 1939:

Sec. 39.272-1 *Assessment of a deficiency.*

(a) If the Commissioner determines that there is a deficiency in respect of the income tax imposed by chapter 1 (see sections 57 and 271),



the Commissioner is authorized to notify the taxpayer of the deficiency by registered mail. If a joint return has been filed by husband and wife the Commissioner may, unless he has been notified by either spouse that a separate residence has been established, send either a joint or separate notice of deficiency, that is, a duplicate original of the joint notice, must be sent by registered mail to each spouse at his or her last known address. The notice to the Commissioner provided for in section 272(a), relating to separate residences, should be addressed to the Commissioner of Internal Revenue, Washington 25, D. C., attention Audit Services Branch, Audit Division. Within 90 days after notice of the deficiency is mailed (or within 150 days after mailing in the case of such a notice addressed to a person outside the States of the Union and the District of Columbia), as provided in section 272(a), a petition may be filed with the Tax Court of the United States for a redetermination of the deficiency. In determining such 90-day or 150-day period, Saturday, Sunday, or a legal holiday in the District of Columbia is not to be counted as the 90th day or 150th day. Except as stated in paragraphs (b), (c), (d), (e), and (f) of this section, no assessment of a deficiency in respect of a tax imposed by chapter 1 shall be made until such notice has been mailed to the taxpayer, nor until the expiration of such 90-day or 150-day period, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. As to the date on which a decision of the Tax Court becomes final, see section 1140.

(g) \* \* \* If the Commissioner mails to the taxpayer notice of a deficiency, and the taxpayer files a petition with the Tax Court within the prescribed period, the Commissioner is barred from determining any additional deficiency for the same taxable year except in the case of fraud and except as provided in section 272(e), relating to the assertion of greater deficiencies before the Tax Court, or in section 273, relating to jeopardy assessments.